

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HOUSTON POLICE OFFICERS'  
PENSION SYSTEM

V.

STATE STREET BANK & TRUST  
COMPANY and STATE STREET  
GLOBAL ADVISORS, INC.

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MDL No. 1945

Civil Action No. 08-05442-RJH

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**STATEMENT OF PLAINTIFF HOUSTON POLICE OFFICERS' PENSION SYSTEM  
REGARDING PROPOSED SETTLEMENT OF THE ERISA CLASS ACTION**

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Plaintiff Houston Police Officers' Pension System, in Cause No. 08-CV-0333 (S.D.T.X.), included in MDL Docket No. 1945, files this Statement Regarding the Proposed Settlement of the ERISA Class Action, and would show as follows:

1. On or about January 29, 2008, HPOPS filed suit against Defendants State Street Bank & Trust Co. and State Street Global Advisors in the Southern District of Texas, Houston Division, in Cause No. 08-CV-00333 ("HPOPS case"). *See* Original Complaint, 01/29/2008, Docket Entry No. 1, in Cause No. 08-CV-00333 (S.D.T.X.).

2. On or about June 20, 2008, the Panel for Multi-District Litigation transferred the HPOPS case from the Southern District of Texas to the Southern District of New York to be included in the MDL Docket No. 1945. *See* JPML Conditional Transfer Order, 06/20/2008, Docket Entry No. 21, in Cause No. 08-CV-00333 (S.D.T.X.).

3. On or about August 19, 2009, Plaintiffs Warren Cohen, trustee of the Unisystems, Inc. Employees Profit Sharing Plan (the "Unisystems Plan"), Alan Kober, Trustee of the

Andover Companies Employee Savings and Profit Sharing Plan (the “Andover Plan”), and John L. Patenaude, member of the Nashua Corporation Pension Plan Committee on behalf of the Nashua Corporation Hourly Employees Retirement Plan and the Nashua Corporation Retirement Plan for Salaried Employees (together “ERISA Lead Class Plaintiffs”) entered into a Stipulation and Agreement of Settlement with State Street Bank & Trust Company to settle claims brought by the ERISA Lead Class Plaintiffs on behalf of the ERISA Class, as defined by the Stipulation and Agreement of Settlement (“the ERISA Class Action”). *See* ERISA Lead Class Plaintiffs’ Memorandum of Law in Support of Lead Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement with State Street Bank & Trust Company, 09/18/2009, Docket Entry 176, Exhibit 1, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.). ERISA Lead Class Plaintiffs’ Memorandum of Law in Support of the Motion for Preliminary Approval of Proposed Settlement with State Street Bank & Trust Company expressly states, “The proposed class action settlement does not resolve or otherwise effect [sic] either the Prudential Action or any of the other actions against State Street that have been coordinated under MDL Docket No. 1945.” *See* ERISA Lead Class Plaintiffs’ Memorandum of Law in Support of Lead Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement with State Street Bank & Trust Company, 09/18/2009, Docket Entry 176, at p. 2 n. 3, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.).

4. On or about October 28, 2009, the Court entered an Order Preliminarily Approving Settlement and Confirming Final Settlement Hearing. The Order certified the following Class for settlement purposes:

All ERISA plans that, based on *State Street’s* books and records, (a) invested in any State Street fund listed in Schedule A to the Stipulation (the “*Funds*”) during the period from January 1, 2007 through and including December 31, 2007 (the “*Class Period*”) and (b) incurred losses on their investments in the 3d calendar quarter of 2007 (the “*Included Plans*”), and the named fiduciaries of those *Included Plans*. Excluded

from the *Class* will be (i) ERISA plans with whom *State Street* has previously (as of June 8, 2009) executed a binding settlement agreement releasing any and all claims relating to the facts of this litigation, and their named fiduciaries, (ii) the Apogee Enterprises, Inc. 401(k) Retirement Plan (“Apogee”) and its named fiduciaries (as to which Apogee filed a Complaint dated January 26, 2009, captioned *Apogee Enterprises, Inc. v. State Street Bank and Trust Company et al.*, in the District of Minnesota, 0:09-cv-00170-DSD-FLN, Docket #1); (iii) the ERISA plans as to which the Prudential Retirement Insurance and Annuity Company (“PRIAC”) filed a Complaint dated October 1, 2007 captioned *Prudential Retirement Insurance and Annuity Company v. State Street Bank and Trust Company, et al.*, 07 civ 8488 (S.D.N.Y.) and their named fiduciaries, (iv) the Federal National Mortgage Association Retirement Plan for Employees Not Covered Under Civil Service Retirement Law (“Fannie Mae”) and its named fiduciaries, and (v) any ERISA plan sponsored by *State Street* and any of its parents, subsidiaries, or affiliates and its name fiduciaries. Also excluded from the *Class* are any putative *Class Members* that exclude themselves by submitting a valid request for exclusion in accordance with the requirements set forth in the Notice. For the sake of clarity, the term “Funds” shall not include any investment portfolio of SSgA Funds, a series mutual fund registered under the Investment Company Act of 1940, as amended.

Order Preliminarily Approving Settlement and Confirming Final Settlement Hearing,  
10/28/09, Docket No. 177, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.).

5. The deadline for a named fiduciary, participant, or beneficiary of an “Included Plan,” as defined by the Order Preliminarily Approving Settlement, to object to the settlement is currently set for February 10, 2010. *See* Order Amending Preliminary Approval Order, November 9, 2009, Docket No. 179, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.).

6. HPOPS does not understand that either the Defendants or the class representatives (or their counsel) contend that HPOPS is a class member as defined by the Court’s Order. Nor, for that matter, does HPOPS consider itself to be included within the scope of the class definition. HPOPS is not a pension plan governed under the Employees’ Retirement Income Security Act of 1974, as amended (“ERISA”). Rather, HPOPS is governed by Texas state law under Article 16, § 67(a) and (c) of the Texas Constitution, and Article 6243g-4 of the Texas

Revised Civil Statutes, entitled “Police Officers’ Pension System in Certain Municipalities.” *See* TEX. R. CIV. STAT. art. 6243g-4(Vernon Supp. 2004). HPOPS is also subject to the Texas Government Code, Section 802, *et. seq.*, governing state public retirement systems. Accordingly, HPOPS is not a fiduciary, participant, or beneficiary of any “Included Plan” under ERISA or otherwise a member or any part of the Class as defined in the ERISA Class Action and certified by Court in the Order Preliminarily Approving Settlement and Confirming Final Settlement Hearing, 10/28/09, Docket No. 177, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.).

7. Consistent with the above, the ERISA Lead Class Plaintiffs explicitly stated in their Memorandum in Support of the Motion for Preliminary Approval of the Settlement that the Settlement was not intended to affect or resolve “any of the other actions against State Street that have been coordinated under MDL Docket No. 1945,” which would include the HPOPS case. *See* ERISA Lead Class Plaintiffs’ Memorandum of Law in Support of Lead Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement with State Street Bank & Trust Company, 09/18/2009, Docket Entry 176, at p. 2 n. 3, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.).

8. Accordingly, HPOPS files this statement to reflect its position for the record that HPOPS is not a member of the ERISA Class that is subject to the Court’s Order Amending Preliminary Approval Order, November 9, 2009, Docket No. 179, in Cause No. 1:07-cv-08488-RJH-DFE (S.D.N.Y.), and the HPOPS case against Defendants State Street Bank & Trust Co. and State Street Global Advisors is not resolved or otherwise affected by the proposed settlement of the ERISA Class Action.

Dated: February 9, 2010

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record via electronic mail on this 9<sup>th</sup> day of February, 2010, as set forth below.

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